76-1414

In the Supreme Court of the United States

FRANCES F. SHAND
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

PETITION FOR WRIT OF CERTIORARI TO REVIEW THE ORDER OF THE UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT.

FRANCES F. SHAND
3531 Freeman Road
Walnut Creek, California 94595

Supreme Court of the United States

PETITION FOR WRIT OF CERTIORARI TO REVIEW THE ORDER OF THE UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA

I, Frances F. Shand, present to the United States Supreme Court this citizen's petition. I am not aware of any official or unofficial reports of opinions delivered in the U. S. Court of Appeals, District of Columbia Circuit Case No. 76-1737. All I received from the Court was their order dismissing my petition for review of the decision of the National Labor Relations Board. The issue – Denial of Due Process at an arbitration in July of 1975. The date of the Appeals Court order to dismiss is December 28, 1976, and is document No. 1 in the accompanying volume of documents. A copy of the order is also appended. No time of entry is noted and no explanation given.

Denial of due process is unconstitutional, and therefore I invoke the jurisdiction of the Supreme Court.

Because my petition was dismissed, I will briefly review my contact with the Appeals Court. The documents will be referred to by the letter (D) with an accompanying number. I will then state the questions for review.

My petition to the Appeals Court is dated July 20, 1976, with attached decisions of the NLRB (D-2, 3, 4). By letter dated the 15th and 16th of September, 1976, I informed the NLRB of the information I felt should constitute the record on review. Copies of my letters were sent to the Court (D-5, 6). I received no response from the Board, and their only contact with me was the sending of a copy of their motion to dismiss my petition (D-7).

Upset over the Board's motion, I immediately sent a

letter of opposition to the Court. It was returned because of improper form, and I submitted my motion dated October 7, 1976 (D-8), with attached relevant correspondence.

Board's letters to Me;

Mr. Robert E. Allen	9/16/75	(D- 9)
Mr. Robert E. Allen	9/30/75	(D-10)
Mr. Michael A. Taylor.....	12/22/75	(D-11)
Mr. Robert E. Allen	1/26/76	(D-12)

My letters to the Board:

Mr. John C. Miller.....	12/26/75	(D-13)
Mr. Robert E. Allen	10/ 6/75	(D-14)
Mr. Robert E. Allen	9/21/75	(D-15)
Mrs. Betty S. Murphy.....	9/13/75	(D-16)

On October 19, 1976, I sent a letter to the Court pertaining to my opposing motion and regarding an affidavit taken by a field representative of the NLRB which I refused to sign. I was denied an accurate and legible copy of the affidavit for my review and signature from both the Washington and San Francisco offices of the NLRB. By request under the Freedom of Information Act, I finally received a copy of the notes. My letter of October 19, 1976, the affidavit notes and two letters regarding the affidavit are (D-17, 18, 19, 20) Court Clerk, Mr. George Fisher's response to my letter is dated November 8, 1976 (D-21). He states in part: "Because of the informal nature of these documents which you have submitted without a motion for leave to file same, they have been lodged in the Clerk's office and a decision will be made as to whether they should be filed and entered on the docket." I heard nothing more about my letter and documents and must assume they were never filed, placed on the docket or reviewed by the Court. I pray the Supreme Court will do so.

When I requested a copy of the transcript of my arbitration under the Freedom of Information Act (D-22), Mr. Michael Taylor, Acting Regional Director, San Francisco, responded, and I quote in part: "A search of the file in the above-captioned case has been made. *There is no transcript of your arbitration in that file.*" "The undersigned is responsible for the determination that the records you have requested *do not exist*" (D-11). On Appeal to the NLRB in Washington, Mr. Robert Allen states in part (D-12): *"There is no transcript of your arbitration proceedings in our files."* "The records you have requested are privileged from disclosure under the FOIA." Did the Board have a legal right to render a decision to my charge of denial of due process without a transcript? Mr. Robert Allen in his letter of November 10, 1975 (D-4), denying my appeal, states in his last sentence: *"After reviewing the entire file* we conclude that further proceedings would be unwarranted." In that same letter, "There is no indication that the Union was unreasonable or arbitrary in not submitting all the documents you wanted introduced before the arbitrator." Two letters, two meaningless envelopes and a tape which I requested the arbitrator accept were accepted as exhibits at my arbitration. The tape was played and accepted. You will note (D-23) that the tape is not listed in the Index of Exhibits and there is no date after Union Exhibit No. 4. I sent three letters to Mr. Bell; which one was introduced? Without all my documents entered in my defense, the tape and the case could not be fairly judged.

Does the Supreme Court agree with the findings of the NLRB (D-3, 4)? I quote in part: "However, the Board has held that while a union has the statutory duty to represent employees fairly, it has also held that negligence by a union in processing an allegedly meritorious grievance is not a violation of the Act; poor

quality representation is insufficient to support a claim of unfair representation. Therefore, even assuming that the union was negligent in the presentation of your grievance, there is no basis for finding that the union violated the Act." If this is the case, by staying away I could have avoided the nightmare of that arbitration. I had to file charges to get my case to arbitration (D-24, 25) and then charges for the denial of due process (D-26). I have sacrificed much in fighting injustice, even the loss of my job after almost nine years of dedicated service.

In their motion to dismiss my petition for review (D-7), the Board cites an impressive list of precedents. I do not believe they represent an analogous situation. Were there individuals filing charges for denial of due process at arbitrations? Did the NLRB render decisions without transcripts? The answer is NO. In my opposing motion (D-8) I refer to the Senate hearings of 1968 on Separation of Powers. Senator Griffin states: "Something must be done and soon. The NLRB story is a chilling case history of what can happen when a federal agency arrogantly thwarts the law."

This petition represents the ultimate in effort that I can make as a citizen after a long, long struggle, and I sincerely request you grant my petition.

Frances F. Shand Frances F. Shand

3531 Freeman Road
Walnut Creek, California 94595

Date April 9, 1977

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA

No. 76-1737

Frances F. Shand
Petitioner
v.
National Labor Relations Board
Respondent

September Term 1976
FILED DEC. 28, 1976
George A. Fisher
Clerk

Before: Wright and McGowan, Circuit Judges

ORDER

On consideration of respondent's motion to dismiss and of petitioner's opposition thereto, it is

ORDERED by the Court that respondent's aforesaid motion is granted and the petition for review herein is dismissed.

Per Curiam

In the Supreme Court of the United States

76-1414

FRANCES F. SHAND
PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

APPENDIX

PETITION FOR WRIT OF CERTIORARI TO REVIEW THE ORDER OF THE UNITED STATES COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT.

FRANCES F. SHAND
3531 Freeman Road
Walnut Creek, California 94595

NATIONAL LABOR RELATIONS BOARD
REGION 20
450 GOLDEN GATE AVENUE, BOX 36047
SAN FRANCISCO, CALIFORNIA 94102
TELEPHONE 556-3197
AREA CODE 415

September 25, 1975

Mrs. Frances Shand
3531 Freeman Road
Walnut Creek, California

Re: Hospital & Institutional Workers
Union, Local 250, AFL-CIO
Case No. 20-CB-3614

Dear Mrs. Shand:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

On August 6, 1975, arbitrator Patrick J. Boner issued his decision finding that your suspension was for just cause. Your charge alleges that the Union violated the Act by defaulting in its obligation to thoroughly prepare and present your grievance to the arbitrator. However, the Board has held that while a union has the statutory duty to represent employees fairly, it has also held that negligence by a Union in processing an allegedly meritorious grievance is not a violation of the Act; poor quality representation is insufficient to support a claim of unfair representation. Therefore, even assuming that the Union was negligent in the presentation of your grievance, there is no basis for finding that the Union violated the Act. Accordingly, I am, refusing to issue complaint in this matter.

Very truly yours,

Natalie P. Allen
Regional Director.

NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNCIL
WASHINGTON, D.C. 20570

November 10, 1975

Re: Hospital & Institutional Workers
Union, Local 250, AFL-CIO
Case No. 20-CB-3614

Mrs. Frances Shand
3531 Freeman Road
Walnut Creek, California

Dear Mrs. Shand:

Your appeal from the Regional Director's refusal to issue complaint in the captioned case has been duly considered.

The appeal is denied substantially for the reasons set forth in the Regional Director's letter of September 25, 1975. The arbitration proceeding appears to have been fair and regular. In your case, due process did not require that the Union provide you with a labor lawyer in the arbitration proceeding and there is no indication that the Union was unreasonable or arbitrary in not submitting all the documents you wanted introduced before the arbitrator. You have not shown that the representation the Union afforded you was based upon arbitrary, invidious or irrelevant considerations.

As for your assertion that you were denied "notes in affidavit form" by Mr. Redstrom of the Board's Regional Office, the record herein reveals that Mr. Redstrom spent more than 5 hours with you eliciting information and preparing an affidavit, which you then refused to sign because it was only random notes. *The extensive document is part of the file* and has been reviewed together with all the materials you have submitted. *After*

reviewing the entire file, we conclude that further proceedings would be unwarranted.

Very truly yours,

John C. Miller
Acting General Counsel

By Robert E. Allen
Director, Office of Appeals

IN ARBITRATION PROCEEDING PURSUANT TO
CURRENT COLLECTIVE BARGAINING
AGREEMENT BETWEEN THE PARTIES

In the Matter of the Arbitration
between

KAISER FOUNDATION HOSPITALS,

and

HOSPITAL AND INSTITUTIONAL
WORKERS UNION LOCAL 250

DECISION AND AWARD
OF
PATRICK J. BONER
ARBITRATOR

Los Gatos, California
August 6, 1975

APPEARANCES

On behalf of the Company . . . Dennis L. Isenburg, Esq.
On behalf of the Union. . . . . William Healy
Grievant . . . . . Frances Shand
Reporter. . . . . Judith A. Fuller, C.S.R.

INDEX OF WITNESSES

INDEX OF EXHIBITS

INTRODUCTION

The Hospital and Institutional Workers Union, Local 250, hereinafter referred to as the "Union," represented in these proceedings by Mr. William Healy and Kaiser Foundation Hospitals, hereinafter referred to as the "Hospital," represented in these proceedings by Mr. Dennis L. Isenburg, are signatory to a Collective Bargaining Agreement covering the period from October 27, 1974, to October 24, 1976.

The parties under the provisions of Article XXVII, Section 4, Step 4, selected Mr. Patrick J. Boner of Los Gatos, California, as the arbitrator. The parties agreed that the issue is timely, arbitrable and properly before the arbitrator.

The parties further agreed that witnesses should be sworn. Additionally, the parties agreed that the

Decision of the Arbitrator is final and binding on the parties.

One party objected to publication of the Decision and Award.

Both parties made brief opening statements.

The current Collective Bargaining Agreement was introduced into evidence and labelled as an exhibit.

BACKGROUND

The grievant, Frances Shand, was hired by Kaiser on September 13, 1967. She is a Cashier-Receptionist with a current rate of pay of $4.6296 (that is four dollars, sixty-two cents and 9.6 mills). This is a position Grade 3.

She was suspended effective at 2:00 PM on February 24, 1975. She was off work from that time until Monday, March 10, 1975. On that date she returned to work at her regular starting time.

Her time off, for the record, was approximately nine (9) shifts of eight (8) hours each.

As a result of the above noted suspension, the Union filed a grievance and asked, as the remedy, that the grievant be returned to work and be made "whole" for the time she was not on the payroll.

The parties processed the grievance through the procedure contained in the current Agreement between the parties, but were unable to resolve the dispute.

Their inability to resolve the dispute has resulted in this arbitration and the subject matter of that dispute is the basis for this case. The parties agreed there is no question of "laches."

ISSUE

Although there was no written formal grievance in this case, the advocates for both parties and the arbitrator agreed that the issue is:

"Was the grievant suspended for just cause?"

"If not, what the remedy shall be?"

HOSPITAL POSITION

The Hospital, by examination and cross-examination of witnesses and by the introduction of documents, stated their case to be:

1. That the grievant was suspended for failure to follow the direction of her supervisor.

2. That the Hospital believes that an employee who will not follow the direction of a supervisor should not be in a pay status.

3. That the length of the suspension was determined by the grievant.

4. That the suspension came to an end when the grievant decided to have a meeting with her supervisor.

5. That, since the length of the suspension was determined by the grievant, the remedy requested, pay for time lost, should be denied.

UNION POSITION

The Union by examination and cross-examination of witnesses and the introduction of documents and a tape, stated their case to be:

1. That the actions of the grievant did not constitute insubordination.

2. That the grievant is a conscientious employee who was greatly concerned about the bills and their mailing; her concern for the hospital, the patient and lastly for herself.

3. That the hospital personnel recognized her as a fine employee — something of a "perfectionist."

4. That she may have relied, to her own detriment, on her belief that the work she was performing resulted from an order from Mr. Chappell, the Administrator.

5. That since the grievant did not attend a requested meeting with her supervisor because of very sincere motives, her actions should be examined in that light.

6. That the grievant's record should be expunged of references to the matters that gave rise to this arbitration.

7. That the grievant should be paid for the work time missed because of the suspension.

DISCUSSION AND OPINION

After a very careful examination of the complete record in this case, and with particular attention to the tape offered in evidence, it is my feeling that although the issue is a narrow one, there are many unusual aspects to it.

In most disciplinary cases, heard by this arbitrator it is a matter of examining to what extent an employee has failed to follow the accepted rules or norms of the requirements of a given job.

In the instant case, those usually expected situations are not present. Instead, we are looking at the record and actions of an employee who feels a great responsibility to the organization for which she works and further, a sincere belief that the interests of the customer must be a matter of prime concern.

Unfortunately, for her own interest, the grievant did not choose the best method of resolving the concerns she felt. As a result of her choice she was suspended for a period of nine-plus days.

As stated by the advocate for the Hospital, the length of that suspension was self-imposed but could have been self-limited. Before framing my Decision in this case, I would like to offer some recommendations to the parties. These are offered because I feel the instant case calls for something more than a mechanically correct award.

My recommendations are these:

1. That a clear-cut guideline from the Hospital be offered to the Union and the employee reaffirming function, reporting procedure and lines of authority involving the parties who were present and/or testified at the hearing.

2. That the parties jointly resolve the matter of what material is in the record of the grievant.

These recommendations are not intended to be a part of the Decision and Award in this case, but are offered as possible method to clear up the situations that brought about this arbitration.

After a careful review of the entire record in this case it is my determination that the suspension of the grievant in this case was for just cause.

Therefore, the following Decision and Award is made.

DECISION AND AWARD

The grievance is denied.

Date: August 6, 1975

PATRICK J. BONER
Arbitrator

No. 76-1414

In the Supreme Court of the United States

OCTOBER TERM, 1976

FRANCES F. SHAND, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

JOHN S. IRVING,
General Counsel,
National Labor Relations Board,
Washington, D.C. 20570.

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1414

FRANCES F. SHAND, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

MEMORANDUM FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

On September 2, 1975, petitioner filed a charge with the Board's Regional Director alleging that the Union[1] had violated the National Labor Relations Act, 61 Stat. 136, as amended, 29 U.S.C. 151, by failing thoroughly to prepare and present her grievance to the arbitrator in a proceeding in which she was found to have been discharged for just cause. On September 25, 1975, the Regional Director advised petitioner that, after careful investigation and consideration of the charge, the Director would not issue a complaint. The Director explained that there was no basis for finding that the Union's conduct in handling the grievance breached its statutory duty of fair representation.[2]

---

[1]Hospital and Institutional Workers Union, Local 250, AFL-CIO.

[2]A copy of this letter is reproduced as Appendix A, *infra*.

Petitioner appealed to the Board's General Counsel, who sustained the Regional Director on the ground that there was no indication that the Union was arbitrary or unreasonable in representing petitioner at the arbitration proceeding.[3] Petitioner sought review in the court of appeals of the General Counsel's action in refusing to issue a complaint on her charge. On December 28, 1976, the court of appeals granted the Board's motion to dismiss the petition for review (Pet. 5).

The court of appeals properly dismissed the petition for review. Section 3(d) of the National Labor Relations Act, 29 U.S.C. 153(d), provides that "[t]he General Counsel of the Board * * * shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints." "[T]he Board's General Counsel has unreviewable discretion to refuse to institute an unfair labor practice complaint." *Vaca* v. *Sipes*, 386 U.S. 171, 182. See also *National Labor Relations Board* v. *Sears, Roebuck & Co.*, 421 U.S. 132, 155; *Saez* v. *Goslee*, 463 F. 2d 214, 215 (C.A. 1), certiorari denied, 409 U.S. 1024. Moreover, because the court of appeals has jurisdiction to review only final orders of the Board, and the General Counsel's refusal to issue a complaint is not such a final order, the court of appeals lacked power to entertain the petition. Section 10(f), 29 U.S.C. 160(f); *Contractors Association of Philadelphia* v. *National Labor Relations Board*, 295 F. 2d 526 (C.A. 3), certiorari denied, 369 U.S. 813.

---

[3]A copy of this letter is reproduced as Appendix B, *infra*.

The petition for a writ of certiorari should be denied.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

JOHN S. IRVING,
General Counsel,
National Labor Relations Board.

MAY 1977.

APPENDIX A

NATIONAL LABOR RELATIONS BOARD

REGION 20
450 Golden Gate Avenue, Box 36047
San Francisco, California 94102
September 25, 1975

Telephone 556-3197
Area Code 415

Mrs. Frances Shand
3531 Freeman Road
Walnut Creek, California

Re: Hospital & Institutional Workers
Union, Local 250, AFL-CIO
Case no. 20-CB-3614

Dear Mrs. Shand:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended, has been carefully investigated and considered.

On August 6, 1975, arbitrator Patrick J. Boner issued his decision finding that your suspension was for just cause. Your charge alleges that the Union violated the Act by defaulting in its obligation to thoroughly prepare and present your grievance to the arbitrator. However, the Board has held that while a union has the statutory duty to represent employees fairly, it has also held that negligence by a Union in processing an allegedly meritorious grievance is not a violation of the Act; poor quality representation is insufficient to support a claim of unfair representation. Therefore, even assuming that the Union was negligent in the presentation of your grievance, there is no basis for finding that the Union violated the

Act. Accordingly, I am, refusing to issue complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel addressed to the Office of Appeals, National Labor Relations Board, Washington, D.C., 20570, and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D.C., by the close of business on October 8, 1975. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. Any request for extension of time must be submitted to the Office of Appeals in Washington, and a copy of any such request should be submitted to me.

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours,

/s/ Natalie P. Allen
Natalie P. Allen
Regional Director

Enclosures

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

APPENDIX B

November 10, 1975

Re: Hosptial & Institutional Workers
Union, Local 250, AFL-CIO
Case No. 20-CB-3614

Mrs. Frances Shand
3531 Freeman Road
Walnut Creek, California

Dear Mrs. Shand:

Your appeal from the Regional Director's refusal to issue complaint in the captioned case has been duly considered.

The appeal is denied substantially for the reasons set forth in the Regional Director's letter of September 25, 1975. The arbitration proceeding appears to have been fair and regular. In your case, due process did not require that the Union provide you with a labor lawyer in the arbitration proceeding and there is no indication that the Union was unreasonable or arbitrary in not submitting all the documents you wanted introduced before the arbitrator. You have not shown that the representation the Union afforded you was based upon arbitrary, invidious or irrelevant considerations.

As for your assertion that you were denied "notes in affidavit form" by Mr. Redstrom of the Board's Regional Office, the record herein reveals that Mr. Redstrom spent more than 5 hours with you eliciting information and preparing an affidavit, which you then refused to sign because it was only random notes. The extensive document is part of the file and has been reviewed together with all the materials you have submitted. After receiving

the entire file, we conclude that further proceedings would be unwarranted.

Very truly yours,

John C. Miller
Acting General Counsel